

Ag star w/
Digger thing.

Attachment III

Comparison of NYSDEC CNMP and ANMP to Federal NMP Requirements

Federal NMP Requirements – 40 CFR 122.42(e)(1)	NYSDEC CNMP (Part III)	NYSDEC ANMP (Appendix C)	Conclusions / Recommendations *
<p>(i) Ensure adequate storage of manure, litter, and process wastewater, including procedures to ensure proper operation and maintenance of the storage facilities</p> <p>meet 590 code 313 pg. 8 - can do</p>	<p>Part III.B.2 and Part III.B.3 & 5 (specific requirements for waste storage structures and leachate collection)</p> <p>Part III.A.5 references O&M requirements for BMPs</p>	<p>Section II (Farmstead / Production Area Elements) has several rows for identification of manure storage facilities, temporary manure pile areas, manure and / or process wastewater transfer structures) via plan map or a facility narrative</p>	<p>Neither the CNMP nor ANMP meet the requirements for a NMP at 40 CFR 122.42(e)(1)(i). The CNMP requirements do not include requirements for procedures to ensure proper operation and maintenance of the storage facilities. In addition, the ANMP only requires a plan map or facility narrative that includes a comprehensive description of all items listed.</p> <p>Procedures for O&M in storage facilities must be addressed.</p>
<p>(ii) Ensure proper management of mortalities (i.e. dead animals) to ensure that they are not disposed of in a liquid manure, storm water, or process wastewater storage or treatment system that is not specifically designed to treat animal mortalities</p>	<p>Part III.B.12</p> <p>(generally conforms; omits "stormwater" from list)</p> <p>will add stormwater</p>	<p>Section II (Farmstead / Production Area Elements) has row for identification of Mortality Management Facilities (if utilized) via a plan map or facility narrative</p>	<p>The ANMP only requires a plan map or facility narrative that includes a comprehensive description of all items listed. The CNMP has the general equivalent of the requirement, but omits "stormwater" from the list of where mortalities cannot be disposed; NYSDEC must include stormwater on the list.</p>
<p>(iii) Ensure that clean water is diverted, as appropriate, from the production area</p>	<p>Part III.B.6</p>	<p>Section II (Farmstead / Production Area Elements) has row for</p>	<p>This issue is not addressed in the draft NYSDEC CAFO permit and is not clearly defined or stated in the CNMP</p>

can post annual plan + Anmp
add
check box and say that they are avail.

360 follow-up later Digest

Federal NMP Requirements – 40 CFR 122.42(e)(1)	NYSDEC CNMP (Part III)	NYSDEC ANMP (Appendix C)	Conclusions / Recommendations *
map shows that clean water flows. And locations, diversions	(requires barnyards and associated wastes to be isolated from outside surface drainage by ditches, dikes, berms, diversions, or other such structures...)	identification of "clean water flows" via a plan map or facility narrative	<p>or ANMP. Information referenced in Part III.B.6 is not comparable to the Federal requirement in 40 CFR 122.42(e)(1)(iii). The ANMP only requires a plan map or facility narrative that includes a comprehensive description of all items listed.</p> <p>Diversion of clean water must be clearly outlined in the NMP in accordance with Federal Requirements.</p>
(iv) Prevent direct contact of confined animals with waters of the United States	Part III.B.9	identifies sect. I map - should show it.	Satisfactory for CNMP; not referenced in the ANMP.
(v) Ensure that chemicals and other contaminants handled on-site are not disposed of in any manure, litter, process wastewater, or storm water storage or treatment system unless specifically designed to treat such chemicals and other contaminants	<p>PS, 304 permit - 7</p>		<p>Neither the CNMP nor ANMP appear to include a requirement to ensure that chemicals or other contaminants handled on-site are not disposed of in any manure, litter, process wastewater or storm water storage or treatment system unless specifically designed to treat such chemicals and other contaminants.</p> <p>NYSDEC must ensure that 40 CFR 122.42(e)(1)(v) is addressed.</p>
(vi) Identify appropriate site specific conservation practices to be implemented, including as appropriate buffers or	Part III.A.7.d	Section III (Field Elements) has rows for identification of setbacks, buffers, erosion control elements via plan map or facility narrative	Satisfactory for CNMP and ANMP.

Federal NMP Requirements – 40 CFR 122.42(e)(1)	NYSDEC CNMP (Part III)	NYSDEC ANMP (Appendix C)	Conclusions / Recommendations *
equivalent practices, to control runoff of pollutants to waters of the United States			
(vii) Identify protocols for appropriate testing of manure, litter, process wastewater, and soil	Part IV.E	<p>Section IV of ANMP includes rows for soil analysis (once every 36 months)</p> <p><i>section 4</i> <i>590</i></p>	<p>40 CFR 122.42(e)(1)(vii) requires that protocols be established in the NMP for appropriate testing of manure, litter, process wastewater and soil. NYSDEC's CNMP requirements only require that the annual analyses from the "land applied waste sources" be maintained with the CNMP. There is no requirement for soil sampling records to be maintained in addition to the waste sources. The actual protocols for testing are not specifically identified as part of the CNMP requirements.</p> <p>In addition, NYSDEC's ANMP requirements appear to only require the analysis results (annually for manure containment structures; every 36 months / 3 years for soil).</p> <p>NYSDEC's permit must ensure that the NMP identifies the sampling protocols for manure, litter, process wastewater and soil as identified in 40 CFR 122.42(e)(1)(vii).</p>
(viii) Establish protocols to land apply manure, litter, and process wastewater in accordance with site	Part III.A.7 (Waste Application Requirements)	Section IV (Field Management) section of ANMP requires information from the producer, such as field ID, planned crops, expected	Part III.A.7 identifies waste application requirements that CAFOs must incorporate into CNMPs and states that "farm personnel shall manage

Federal NMP Requirements – 40 CFR 122.42(e)(1)	NYSDEC CNMP (Part III)	NYSDEC ANMP (Appendix C)	Conclusions / Recommendations *
specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter or process wastewater		yields, manure recommendations, manure source, manure application rate/timing/method and chemical fertilizer recommendations <i>Perd in fact sheet how it complies. In 590- that they use both.</i>	application rates and timing so as to prevent runoff during any given application event.” This does not give reasonable assurance that there will be appropriate agricultural utilization of the nutrients in the manure, litter or process wastewater and that NMPs will be developed accordingly. Furthermore, NYSDEC’s permit does not define the “terms of the nutrient management plan” (e.g. linear or narrative and the associated requirements for each methodology). As a result, it is difficult to ensure that appropriate utilization of nutrients will occur. Section IV of the ANMP contains limited amounts of information, which can be used for the NMP approaches (planned crops-for crop year only, expected yields, manure recommendation, etc.); however, the information is incomplete and the terms of the NMP again are not defined. Methodology must be included.
(ix) Identify the specific records that will be maintained to document the implementation and management of the minimum elements	Part III.F.2 states that CAFO owners and operators must maintain a copy of the site specific CNMP on-site and records documenting the implementation of BMPs and procedures described in the CNMP.	<i>Pg. 22 V F.2</i>	While Part III.F.2 of the CNMP requires CAFO owners and operators to maintain a copy of the NMP on-site and records documenting the implementation of BMPs and procedures described in the NMP,

Federal NMP Requirements – 40 CFR 122.42(e)(1)	NYSDEC CNMP (Part III)	NYSDEC ANMP (Appendix C)	Conclusions / Recommendations *
described in paragraphs (e)(1)(i) through (e)(1)(viii) of this section.			<p>there is no language that requires CAFOs to identify the specific records that will be maintained (as required by 40 CFR 122.42(e)(1)(ix).</p> <p>As noted previously, NYSDEC specifically requires that manure analyses must be maintained on-site with the CNMP (Part IV.E).</p> <p>To ensure that all necessary documents are maintained, the specific documents need to be listed in the NMP.</p>

*NYSDEC needs to address EPA's recommendations in the document that NYSDEC chooses to utilize as a NMP.



**Department of
Environmental
Conservation**

FACT SHEET

For

**NEW YORK STATE
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
CWA SPDES GENERAL PERMIT
FOR
CONCENTRATED ANIMAL FEEDING OPERATIONS
(CAFOs)**

Permit No. GP-0-16-002

**Issued Pursuant to Article 17, Titles 7 & 8, and Article
70 of the Environmental Conservation Law**

January 2017

INTRODUCTION

The New York State Department of Environmental Conservation (NYSDEC) is renewing and modifying the CWA SPDES General Permit for Concentrated Animal Feeding Operations (CAFOs) as GP-0-16-002. The new CWA general permit will be effective on July 24, 2017. GP-0-16-002 replaces the previous general permit, GP-04-02 which has been administratively extended under the State Administrative Procedure Act.

GP-0-16-002 is a five (5) year permit that provides coverage for CAFOs with a discharge from their production areas to surface waters of the State. The CWA general permit also authorizes discharges of non-contact cooling water to non-trout surface waters of the State in cases where the discharge meets the characteristics outlined in the permit.

Pursuant to Section 402 of the CWA, discharges from CAFOs are unlawful unless they are authorized by a National Pollutant Discharge Elimination System (NPDES) permit or by a state permit program. New York's State Pollutant Discharge Elimination System (SPDES) is a NPDES-approved program with permits issued in accordance with the Environmental Conservation Law (ECL). Any owner or operator of a new CAFO that is eligible for coverage under this general permit must obtain coverage prior to operation of the CAFO. An owner or operator of an existing permitted CAFO that becomes eligible for coverage under this general permit must obtain coverage under this permit prior to termination of coverage under any other SPDES permit.

clarify

Permit transition:

CWA General Permit to CWA General Permit

Pursuant to section 401 of the State Administrative Procedure Act, and 6 NYCRR 621.11(1), GP-04-02 was administratively extended. Thus, facilities with effective coverage under GP-04-02 are eligible for continued permit coverage under GP-04-02 until the effective date of this general permit (GP-0-16-002). In order to maintain uninterrupted coverage under the CWA general permit, a completed Notice of Intent (NOI) form and Annual Nutrient Management Plan (ANMP) signed by the owner and AEM certified planner must be received by the Department within 120 calendar days from the date this general permit (GP-0-16-002) is issued. The extra time allowed for in this transition period versus the ECL general permit transition period is necessary to allow for the required public comment/hearing period, as well as to allow facilities to meet the new requirements in the revision. The process for Department review and approval, as well as public participation, is discussed in the Significant Changes below. The Department will review the completed NOI and ANMP and will notify the applicant if coverage under this general permit has been approved. Coverage does not become effective until approved by the Department.

✓ just confirming

ECL General Permit to CWA General Permit

Pursuant to section 401 of the State Administrative Procedure Act, and 6 NYCRR 621.11(l), GP-0-14-001 was administratively extended. Thus, facilities with effective coverage under GP-0-14-001 are eligible for continued permit coverage under GP-0-14-001 until the effective date of the ECL general permit (GP-0-16-001). If a facility chooses to seek coverage under the new CWA general permit (GP-0-16-002), it must submit a completed NOI form and ANMP signed by the owner and AEM certified planner to the Department. In order to maintain uninterrupted coverage under a general permit, the Department must receive the completed NOI form and the ANMP within 120 calendar days from the date new ECL general permit (GP-0-16-001) is issued. The GP-0-16-002 process for Department review and approval, as well as public participation, is discussed in the Significant Changes below. The Department will review the completed NOI and ANMP and will notify the applicant if coverage under this general permit has been approved. Coverage does not become effective until approved by the Department.

Please note that the conditions outlined in Part II.A.4 of GP-0-16-002 also apply to facilities that want to transition between GP-0-16-001 and GP-0-16-002.

SIGNIFICANT CHANGES

Public Participation/Annual Nutrient Management Plan (ANMP): In order to address the requirements outlined in the *Waterkeeper Alliance, Inc. et al. v. EPA* 399 F3d 486 (2005) ("Waterkeeper decision") and the 2012 consolidated federal CAFO Rule, the Department developed the ANMP, which is a consolidated version of the Comprehensive Nutrient

Management Plan (CNMP) that the CAFO must maintain on-site. This ANMP creates a template for farmers to follow to comply with the 2012 CAFO Rule.

The *Waterkeeper* decision held that the terms of the nutrient management plans are effluent limitations that are subject to public comment and hearing and must be reviewed and approved by the permitting authority. Eligibility for the CWA general permit is contingent on having a CNMP written by a certified planner. The New York State Department of Agriculture and Markets oversees planner certification and the quality assurance program for that certification. Each farm-specific CNMP identifies the environmental sensitivities of the farm and utilizes the technical standards set by the United States Department of Agriculture - Natural Resources Conservation Service (USDA - NRCS) to mitigate those environmental impacts (available at: <https://efotg.sc.egov.usda.gov/toc.aspx?CatID=10980>). These technical standards are the effluent limitations to be included in each farm-specific nutrient management plan. The ANMP provides an outline of the farm-specific effluent limitations in a consolidated format to allow for manageable review by both the public as well as the Department. For example, NRCS Standard NY 590 describes the protocol that must be followed when sampling fields to receive waste applications. The results of those samples, which are used to calculate the Nitrogen Leaching Index Rating and Phosphorus Runoff Index Rating for each field, are included in the ANMP. These results are used to calculate the application rates for each field, which are also made available in the ANMP. The public is given the opportunity to comment and request a hearing, on the effluent limitations when the general permit is publicly noticed. See Article 70; 6 NYCRR 621.7. Additionally, the public is given an opportunity to comment on the farm specific elements, when the ANMP is submitted with the NOI prior to the facility being granted permit coverage. *recommended*

The farm-specific ANMP must be submitted with the NOI for coverage under this CWA general permit and the availability of both will be publically noticed, comments received for 30 days, and an opportunity to request a hearing provided. Upon submission of the ANMP and NOI, the Department will have 60 days to review the documents in order to ensure compliance with permit requirements and will notify the applicant if changes are needed. If, at any time throughout the term of the CWA general permit, the individual farm proposes an action that does not meet NRCS standards (ie. the effluent limitations established in the permits) then a revised ANMP must be submitted to the Department, made available to the public for comment and an opportunity to request a hearing provided. Part IV.F. of the permit describes these actions that warrant submission of a revised ANMP, which are consistent with the requirements of the 2012 CAFO Rule.

Although the ANMP meets the minimum requirements outlined in the *Waterkeeper* decision, it only provides for anticipated compliance. In order to provide reasonable assurance that the anticipated compliance was fulfilled, CAFO owner/operators in NY are required to submit an Annual Compliance Report (ACR) at the end of each year. The ACR provides an opportunity for the owner/operator to outline any changes made to the CNMP throughout the year and requires certification by the owner/operator that they complied with the terms of the permit, including the farm-specific effluent limitations. These reports are submitted to the Department

no
FOI
exempt

by March 31st of each year and are available to the public through the Freedom of Information Law (FOIL) process (<http://www.dec.ny.gov/public/373.html>). This system of "before and after" reporting provides for transparency of the farms operations and allows for the Department, as well as the public, to gain a more complete picture of compliance. All forms related to the CAFO program, including the ACR, can be found at: <http://www.dec.ny.gov/permits/55373.html>.

2012 CAFO Rule adherence: The 2012 consolidated federal CAFO Rule requires owners/operators of CAFOs to indicate in their CNMP which nutrient application methodology they are following in order to provide reasonable assurance that there will be appropriate agricultural utilization of nutrients in the manure, litter or process wastewater applied to their land base. Specifically, the CAFO Rule requires adherence to either a Linear Method or a Narrative Method as described in 40 CFR 122.42(e)(5). In NY, these methods are combined to form the NRCS Standard NY 590 which incorporates Cornell's Nutrient Guidelines, including the NY Nitrate Leaching Index and the NY Phosphorus Runoff Index, and ensures appropriate agriculture utilization of nutrients. The farm-specific field-by-field requirements set by NY590 are required to be followed by all permitted CAFOs in NY and are described in the ANMP which is available to the public.

Advanced notification: Advanced notification must be made to the Department when significant operational changes are made at the facility including: 1) increasing the number of animals by 20%; or 2) constructing or expanding a liquid or semisolid waste storage facility greater than one million gallons. This information was deemed significant by the Department based on a risk to water quality and public interest, respectively. The information submitted will be made available to the public upon request.

not
amended w/
permit

New Swine, Poultry or Veal Calf CAFO Effluent Limitations/addition of Wet Weather Standard Operating Procedures: Part I.B.1. of the permit requires CAFOs to develop Wet Weather Standard Operating Procedures (WWSOPs) as part of their CNMPs and ANMPs in order to demonstrate compliance with the no discharge effluent limit for new swine, poultry or veal calf CAFOs. These WWSOPs are those management strategies, above applicable NRCS standards, that the AEM certified planner determines the farmer must employ to prevent discharges to surface waters of the State up to, and including, the 100-year, 24-hour storm event. WWSOPs are farm-specific and may include enhanced operating and maintenance schedules, additional clean water diversion techniques during high flow events, increased containment/freeboard, extended weather forecast considerations, emergency spreading procedures, or re-routing of Best Management Practice (BMP) overflow paths during high flow events.

The 2003 Federal Register preamble described that "a CAFO may meet the zero discharge standard by designing, construction, operating, and maintaining its waste management and storage facilities to contain all manure, litter and process wastewater including the direct precipitation and runoff from a 100-year, 24-hour rainfall event." The Federal Register goes on

to describe this criteria as providing the protection of the resource that EPA intended. [Federal Register/Vol. 68., No. 29, pg 7220 (2003)].

In 2008, EPA deleted that provision in the Federal Register as they determined a discharge beyond the 100 year storm is technically still a discharge and therefore should not be described as "zero discharge". The 2008 CAFO Rule, however, allows for site specific evaluations to demonstrate a system to be capable of achieving the no discharge requirement. The Federal Register [Vol. 73., No. 225, pg 70460 (2008)] goes on to explain that this demonstration is designed to show that there will be no discharge from the CAFO except in exactly the circumstances provided in EPAs upset/bypass regulations. In those regulations [40 CFR 122.41(n)], an "upset" is defined as "an unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the permittee."

The Department performed a technical evaluation for a class of specific facilities (CAFOs) within a specified geographical area (NY) and determined that an upset/bypass is beyond the reasonable control of the CAFO if the 100-year storm criteria coupled with WWSOPs are properly managed (40 CFR 122.41(n)). The Department believes that the newly required WWSOPs, when properly implemented together with the other requirements of this permit, may demonstrate that there will be no discharge from the CAFO except in exactly the circumstances provided in EPAs upset/bypass regulations.

The addition of WWSOPs to the CWA general permit is intended to clarify the no discharge criteria of this permit and is consistent with the language provided in the Federal Register and 2008 CAFO Rule.

Winter Spreading Restrictions: The Department has added a number of conditions to the CWA general permit intended to prevent water quality violations during winter conditions. Part III.A.7. of the CWA general permit provides for a ban on spreading when soils are saturated (frozen or fluid) or at a rate that exceeds the saturation capacity of that field at the time of application. In addition, conditions contained in Part III.A.7.a) - c) and Part III.B.4. were added to further address high risk situations that have resulted in water quality violations in the past. Of particular importance, Part III.A.7.b of the permit requires that the certified planner include detailed winter application procedures in their CNMP and the farmer is required to follow those procedures in order to maintain compliance with this permit.

The NRCS NY 590 Standard was updated in January 2013 to include additional restrictions on winter spreading, and is incorporated into the CWA general permit. The Department expects that these restrictions coupled with the supplementary CWA general permit conditions described above will reduce the number and severity of water quality violations resulting from winter spreading because they specifically address the source of the problems identified.

*preamble
case by ca*

*site by
site
specific*

*comment
follow
Federal
reg*

Non-Contact Cooling Water (NCCW) authorization: Part III.B.1. of the permit provides characteristics of NCCW from CAFOs that are authorized to be discharged under this permit if the listed set of conditions are met.

Producers in the dairy industry utilize pre-coolers as an option to reduce energy costs. These pre-coolers typically use groundwater as a coolant to lower milk temperature prior to entering a refrigeration system. The NCCW generated by these pre-coolers (typically between 62-67° F) is often re-used on the farm to the maximum extent possible as drinking and/or wash water for animals, but it is common practice to add the remainder to manure storage. Adding this NCCW to manure storage is problematic for farmers as this water may take up much needed capacity.

Temperature is one of the most important variables that determine the quality of aquatic habitats; with fish species being among the most sensitive organisms for specific thermal ranges. The Water Quality Standard for Thermal Discharges and subsequent thermal discharge criteria contained in 6 NYCRR 704.1 address this point.

The Water Quality Standard for Thermal Discharges (6 NYCRR 704.1) states “[a]ll thermal discharges to the waters of the State shall assure the protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife in and on the body of water.” By requiring the discharge to non-trout waters to meet the conditions outlined in Part III.B.1. of the CWA general permit, the permit reasonably protects the classified water use and assures compliance with the standard, 6 NYCRR 704.1.

The Department also has the authority to require an application for an individual SPDES permit if a discharge is found to be noncompliant with the conditions of the CWA general permit and/or is causing or contributing to a water quality violation.

Construction Stormwater General Permit/State Historic Preservation Act (SHPA):

Certain construction activities related to CAFOs may require coverage under the Construction Stormwater General Permit. Tables 1 and 2 of that permit include a list of such construction activities. The requirement to comply with SHPA is included as an eligibility criteria as part of obtaining coverage under that permit. Construction activities occurring on CAFOs with coverage under this CWA general permit are further discussed in Appendix B of the permit.

E-Reporting Rule: The Department has modified the forms associated with the permit (NOI, ACR, ANMP) to ensure all information required to be collected by the e-reporting rule is submitted to the Department. The Department will then submit this information to EPA electronically as required by the Rule.

OTHER CHANGES

The following changes were included at the request of stakeholders and/or to provide clarity to the regulated community. Based on its best professional judgement, the Department believes these changes will result in a more understandable CAFO program which will promote better compliance.

- Clarification that *New* CAFOs must have fully implemented their CNMP prior to becoming *operational* (vs. prior to submitting an NOI)
- A Change of Operation form must be submitted instead of a Change of Status form if the facility intends to increase the number of animals by more than 20% or if a manure storage structure of more than 1 million gallons will be constructed
- List of specific NRCS Standards, which are the effluent limitations *OKay*
- Acquired farm implementation schedule
- Existing farms with existing practices have 12 months to get required certifications *BPS*
- Limited PE evaluations for waste transfer systems
- Contractor Certification
- Single Application Rate
- Retention facilities must be designed, operated and maintained to prevent discharge to surface waters
- Barnyards isolated from a minimum 25 year storm and solids collected
- Increased farm staff education requirements (Planner on-site CNMP Review and staff attend manure applicator training)
- Recordkeeping requirements same for Medium and Large CAFOs under this CWA general permit (GP-0-16-002)
- Electronic Recordkeeping
- Definitions added: 100-year storm, Acquire, Winter Spreading Conditions, ANMP, Field, Saturated, Frozen-Saturated, Litter

① site specific
implementation
of sub permit
②

